

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TYRONE MOORE #369259,

Plaintiff,

Case No. 1:08-cv-731

v

HON. JANET T. NEFF

UNKNOWN PREVO, et al.,

Defendants.

OPINION

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. On September 18, 2008, the Magistrate Judge filed a Report and Recommendation, recommending that the action be dismissed upon initial screening pursuant to 28 U.S.C. § 1915A(b) and 1915(e)(2)(B) on grounds that the complaint failed to state a claim. The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. Civ. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Judgment. *See* FED. R. Civ. P. 58.

Plaintiff objects to the Magistrate Judge's conclusion that his complaint failed to state a claim. Plaintiff reiterates his argument that he has a constitutional right to "medical privacy." Plaintiff's argument is without merit. The Magistrate Judge properly concluded that under relevant Supreme Court and Sixth Circuit precedent, an inmate's constitutional right to privacy is not

violated by the disclosure of an inmate's HIV infection to a corrections officer. *See Doe v. Wigginton*, 21 F.3d 733, 740 (6th Cir. 1994).

Plaintiff also argues that his complaint establishes a cause of action for common-law slander per se. Plaintiff did not present this theory to the Magistrate Judge, and the Court therefore deems the argument waived. "While the Magistrate Judge Act, 28 U.S.C. § 631 *et seq.*, permits de novo review by the district court if timely objections are filed, absent compelling reasons, it does not allow parties to raise at the district court stage new arguments or issues that were not presented to the magistrate." *Murr v. United States*, 200 F.3d 895, 902 n. 1 (6th Cir. 2000).

Plaintiff's third argument is that Defendants violated state law and Michigan Department of Corrections Policy by disclosing his HIV positive status to unauthorized persons. Again, this theory was not presented to the Magistrate Judge and is therefore deemed waived.

For these reasons and because this action was filed *in forma pauperis*, this Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Opinion and Judgment would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610-11 (6th Cir. 1997).

A Judgment will be entered consistent with this Opinion.

Date: February 5, 2009

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge

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JUDGMENT

In accordance with the Opinion entered this date:

IT IS HEREBY ORDERED that the objections (Dkt 11) are DENIED and the Report and Recommendation (Dkt 4) is APPROVED and ADOPTED as the opinion of the Court.

IT IS FURTHER ORDERED that the Complaint (Dkt 1) is DISMISSED pursuant to 28 U.S.C. § 1915A(b) and 1915(e)(2)(B) for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that the Court certifies pursuant to 28 U.S.C § 1915(a) that an appeal of the Judgment would not be taken in good faith.

Date: February 5, 2009

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge